

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

T. ROWE PRICE TAX-FREE HIGH YIELD  
FUND, INC., SMITH BARNEY INCOME  
FUNDS/SMITH BARNEY MUNICIPAL  
HIGH INCOME FUND, DRYDEN  
NATIONAL MUNICIPALS FUND, INC.,  
LOIS AND JOHN MOORE and ACA  
FINANCIAL GUARANTY  
CORPORATION

*Plaintiffs,*

v.

KAREN M. SUGHRUE, GARRY L.  
CRAGO, JEAN W. CHILDS, PAULA  
EDWARDS COCHRAN, G. STEVENS  
DAVIS, JR., JULIA B. DEMOSS, WILLIAM  
R. DILL, LESLIE A. FERLAZZO, JOYCE  
SHAFFER FLEMING, ERIC W. HAYDEN,  
CATHERINE CHAPIN KOBACKER,  
ANNE MARCUS, CELESTE REID,  
RICHARD J. SHEEHAN, JR., JOSEPH  
SHORT, GREGORY E. THOMAS, SUSAN  
K. TURBEN, DONALD W. KISZKA and  
ADVEST, INC.,

*Defendants.*

Civil Action No. 04-11667 RGS  
Consolidated into  
Civil Action No. 05-10176-RGS\*

**PLAINTIFFS MOTION TO STRIKE IN SUPPORT OF THEIR OPPOSITION TO  
DEFENDANTS MOTIONS TO DISMISS**

TheThe Institutional Bondholders, the MooresThe Institutional Bondholders, the Moores and ACA move  
M.M. Sughrue,M. Sughrue, Exhibit 4 to the Memorandum in Support Of Bradford Defendants MotionM. Sughrue  
andand Paragraph 11 and Paragraph 11 of theand Paragraph 11 of the Bradford Defendants Motion To Dismiss the  
asas Argument I.A.4 of their memorandum in supportas Argument I.A.4 of their memorandum in support of said m

properly properly before the Court in its consideration of Defendants' Motions To Dismiss properly before the Court.

thereof, Plaintiffs state as follows:

1. In ruling on a motion to dismiss pursuant to Fed.R.C.P. 12(b)(6), the court only consider the allegations of the complaint, the documents only consider the allegations of public record, and other matters of which the court may take judicial notice. Banco Santa Banco San dede Puerto Rico v. Lopez-Stubbe (In dede Puerto Rico v. Lopez-Stubbe (In dede Puerto Rico v. Lopez-Stubbe (In re 2003).

2. In support of their motions to dismiss the Bradford In support of their motions to dismiss the Bradford of Karenof Karen M. Sughrue and an excerpt from the book Liberal Arts Colleges: Liberal Arts Colleges: Surviving Endangered? by David W. Breneman (Exhibit 4 to the Memorandum by David W. Breneman (Exhibit 4 to the Defendants Motion To Dismiss). These materials are not the type that may be considered in a motion to dismiss and should be stricken from the record.

3. Paragraph 11 of the Bradford Defendants Motion to Dismiss tParagraph 11 of ComplaintComplaint and Argument I.A.4 of their memorandumComplaint and Argument I.A.4 of their memoran the Four Year Statute of Repose.

4. Each of the Bradford Defendants and Second Standstill and Tolling Agreement to which the Plaintiffs are either signatories or beneficiaries. Copies of the agreements are attached to the agreements, the Bradford Defendants agreed to waive their rights to enforce statutes of limitation and statutes of repose against the Plaintiffs in exchange for Plaintiffs' agreement not to file any lawsuit against the Bradford Defendants within a certain period of time. In addition, paragraph 1 of each agreement contains the following provision:

Each Potential Defendant hereby agrees and acknowledges that it shall not plead or raise and is estopped from pleading or raising the same during the Tolling Period as part of its Limitations Period with respect to any Claim.

5. Argument I.A.4 violates the Bradford Defendants' agreement not to plead on any statute of limitation or statute of repose against the Plaintiff's specific performance of the agreement the Bradford Defendants have breached, which is best accomplished by striking the offending argument.

Wherefore, for the reasons set forth above, this Court should strike:

1. the Affidavit of Karen M. Sughrue;
2. Exhibit 4 to the Memorandum in Support Of Bradford Defendants' Motion To Dismiss; and
3. Paragraph 11 a and of the Bradford Defendants' Motion To Dismiss, Complaint and Argument I.A.4 of the memorandum in support of said motion.

T.T. ROWE PRICE, T. ROWE PRICE TAX-FREE HIGHT, ROWE PRICE  
INC., INC., SMITH INC., SMITH BARNEY INCORPORATED, SMITH  
BARNEY BARNEY MUNICIPAL HIGH IN BARNEY MUNICIPAL  
DRYDEN DRYDEN DRYDEN NADRYDEN NATIONAL DRYDEN  
LOIS LOIS and JOHN LOIS and JOHN MOOR LOIS and JOHN  
GUARANTY CORPORATION

By their attorneys,

/s/ Michael Tabb

Thomas Hoffman, Esq. BBO # 237320

Thomas Greene, Esq. BBO# 210020

Michael Tabb, Esq. BBO # 491310

Greene & Hoffman, P.C.

125 Summer Street, 14th Floor

Boston, Massachusetts 02110

(617) 261-0040

Dated: May 2, 2005

**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule 7.1(a)(2), I, Michael Tabb, counsel for the Plaintiffs, certify that I have conferred with the Bradford Defendants counsel in good faith to resolve or narrow the issues presented by the Plaintiffs Motion to Strike in Support of their Opposition to Defendants Motions to Dismiss.

/s Michael Tabb

Michael Tabb